

14
FEBRUARY 28. 1792.

PETITION

OF
The Honourable LORD DAER. }

LAURENCE HILL W. S. Agent.

M^r. Clerk.

518. P 13

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Blair

UNTO THE RIGHT HONOURABLE
The Lords of Council and Session,

T H E
P E T I T I O N

O F

The Honourable BASIL WILLIAM DOUGLAS ^K
commonly called Lord Daer;

HUMBLY SHEWETH,

THAT upon advising a petition and complaint presented for Peter Johnstone of Carnfalloch, against the inrolment of the present petitioner, in the roll of freeholders of the stewartry of Kirkcudbright, your Lordships, of this date, were pleased Jan. 24. 1792. to pronounce the following interlocutor: " The Lords having resumed
" the consideration of this petition and complaint, and advised the same,
with

“ with the answers, replies, duplies, petition for the Honourable Keith Stewart, and others, minute and papers therein referred to, they sustain the objection to the respondent's claim for inrolment; find the freeholders did wrong in inrolling him in the roll of freeholders of the stewartry of Kirkcudbright; therefore, grant warrant to, and ordain the steward-clerk of the said stewartry, to expunge the name of the said Basil William Douglas commonly called Lord Daer, from the roll, and decern; but find no expences due.”

That immediately before this judgment was pronounced, a short written minute was given into Court, by the counsel for the objecting freeholders, in which it is, *inter alia*, said, “ It is assumed in the duplies, that some of the masters appearing in the rolls of Parliament before the establishment of representation, were possessed of lands in their own right. But of this no evidence whatever is produced.” This minute the petitioner had no opportunity of seeing till after judgment was pronounced.

Your Lordships will recollect, that when the cause was advised, there were in your hands printed copies of certain papers and records founded on in the pleadings for the petitioner; and among these copies there was a table shewing the dates of the charters appearing on record, by which the eldest sons of Peers who sat in the Parliament were qualified to sit there, in terms of the acts of Parliament respecting this matter.

Your Lordships know very well, that in questions of this nature, which depend upon inquiries and researches in the records of Scotland, it is customary to refer to the records which the law of this part of the kingdom presumes to be in your Lordships custody, in place of producing voluminous extracts, and copies from them, in Court.

The petitioner does not believe that his opponents mean, in any future stage of this business, to deny facts, of which they must be satisfied from the records here, or which are in themselves notorious; at the same time he thinks it proper to make the present application to your Lordships, for liberty to produce in the present process, extracts or certificates, by the proper officer, of the records on which he relied, and which were referred to in the printed papers on which the cause was decided.

In

In the written minute above mentioned, a typographical error in the duplies has been objected to as an error in point of fact. The year 1791, was erroneously printed for 1491; but that error was observed, and rectified copies of the duplies put into the hands of your Lordships before the cause was advised.

It is said in the minute, " That in none of the rolls are Peers Eldest Sons mentioned as such, though no doubt a few *Masters* sometimes occur; but that appellation means no more than the presumptive heir of a Peer, whether by destination or by blood."

The objectors have not in direct terms disputed, that the greatest part, indeed almost the whole of the Masters who appear sitting in Parliament, were in fact the Eldest Sons of Peers: Yet the above assertion is couched in such terms as seem to imply this; and therefore, it ought to have been made sooner, and not in a minute slipped into the cause, just before the decision, and to which the petitioner could not make answer till after the decision was pronounced.

The objectors are too much versed in the history of the country, and in the genealogy of the families of the Nobility, not to know, that the greatest part of the Masters found sitting in Parliament, were in fact the Eldest Sons of Peers. This fact is notorious, and is instructed by the history of the country, as well as by the books of the Peerage, quoted and founded on by the objectors themselves; and is farther instructed by the extracts of the charters now produced, as was noticed in the duply for Lord Daer.

It is said, that the rolls 1567, and 1568, are not extant; but this is a mistake. They are extant in the Register Office, and extracts of them ready to be produced.

It is said, that in no one instance are the Masters designed by lands, whereas the Lesser Barons are uniformly so designed. This ought to have been explained. In Scotland, your Lordships know very well, that prior to the last century, every proprietor of lands, unless he had a superior title of quality, was in general denominated shortly by his estate. Accordingly, this mode of denomination is often applied to the Lesser Barons in the rolls of Parliament. Thus, Restalrig, in place of
Logan

Logan of Restalrig ; Lochleven, in place of Douglas of Lochleven, &c. and so on ; but very often the Lesser Barons are designed by their name alone : For instance, in the roll 7th October 1488, there is found Walter Kerr, Patrick Hume, and Archibald Edmestone. In the roll 13th March 1503, there is Sir John Sommerville and Sir John Ramfay ; and many other instances might be given. The denomination by the estate was adopted for the sake of brevity, and not as descriptive of the title under which the person sat ; and Restalrig, Lochleven, &c. would have been so denominated in any other meeting, as well as a meeting of Parliament.

It is said that Crichton's case, from Dumfriesshire, has been unfairly quoted. A certified copy or extract of that paper is ready to be produced, to put an end to all argument on this subject.

May it therefore please your Lordships, to allow the petitioner to produce the extracts and certificates herewith exhibited, to which the printed papers in this case refer, and of which a list is hereto annexed ; and to allow these to be received as evidence, and make part of this process ; and farther, to alter the interlocutor above recited, and to find that the freeholders of the stewartry of Kirkcudbright did right by inrolling the petitioner in the roll of freeholders.

According to Justice, &c.

R O. B L A I R.

APPEN-

APPENDIX.

INVENTORY of EVIDENCE referred to in the foregoing Petition.

- Extract of the Roll of Parliament 1st March 1478.
- Extract of the Roll of Parliament 13th April 1481.
- Extract of the Roll of Parliament 7th October 1488.
- Extract of the Roll of Parliament 13th March 1503.
- Extract of the Roll of Parliament 10th July 1525.
- Extract of the Roll of Parliament 13th June 1526.
- Extract of the Roll of Parliament 30th July 1546.
- Extract of the Roll of Parliament 4th August 1546.
- Extract of the Roll of Parliament 14th August 1546.
- Extract of the Rolls of Parliament 1567 and 1568.

All these formerly
printed, and in the
hands of the Court.

Founded on in the Du-
plices for Lord Daer,
page 17, 18, 26, &c.

B.

Extract

An excerpt formerly
printed, and in the
hands of the Court.
A full copy formerly
given to the other par-
ty.

Extract of the Exceptions against James Crichton, why he ought not to be the Commissioner to the Parliament for the Shire of Dumfries, Anno 1660 and 1661.

Extract of an unprinted Act for settling the Order in the Parliament-House 13th May 1662.

Extract of an unprinted Act concerning Members of Parliament who do not attend, 13th May 1662.

All these formerly
printed, and in the
hands of the Court.

Extract of the Record of Convention 24th November 1572.

Ditto ditto 5th March 1574.

Ditto 6th January 1596.

Ditto 22d May 1596.

The number conde-
scended on in the Du-
plices for Lord Daer,
pages 25 and 26, and
also appearing from the
printed statute-book,
and a certified copy
made for the use of
both parties.

Certificate by the Keepers of the Records of the Number of Parliaments and Rolls between 1587 and the Restoration.

All condescended on in
the table formerly print-
ed for Lord Daer, in
the hands of the Court.

Ditto ditto of the Sitting of Masters in the Parliament of Scotland.

Referred to in the Du-
plices for Lord Daer,
page 34.

Petition of the Commissioners of the Royal Boroughs for Suspension of a Tax, and Deliverance of the Parliament thereon, 5th September 1662.

Referred to in the Du-
plices for Lord Daer,
page 36, and the sitt-
ing in parliament, in-
structed by a certified
copy made for the use
of both parties.

Resolve of the Parliament of Scotland about the Qualification of the Commissioners of Boroughs, 5th August 1681.

Certificate by the Keepers of the Records, that Sir George Skene and Sir Donald Bain sat in the said Parliament.

Extract

Extract Proceeding of the Parliament of Scotland, respecting Lord Livingstone, 19th March 1689.

} Referred to in the Duplicates for Lord Daer, page 36.

Extract Charter, in favour of the Master of Hales, of the Barony of Dunfyar, 13th October 1475.

Extract Charter, in favour of the Master of Sommerville, of the Barony of Carnwath, 2d May 1477.

Extract Charter, in favour of the Master of Huntly, of the Lands of Innerness, &c. 16th December 1482.

Extract Charter, in favour of the Master of Angus, of the Lands of Jedworth-Forest, &c., 31st January 1488.

Extract Charter, in favour of the Master of Lindsay, of the Lands of Pitcruiue, 14th June 1498.

Extract Charter, in favour of the Master of Erskine, of the Barony of Kellie, 20th May 1536.

All these condescended on in the table printed by Lord Daer, in the hands of the Court.

Extract Charter, in favour of the Master of Sempill, of the Island of Cumray, 23d February 1532.

Extract Charter, in favour of the Master of Rothes, of the Barony of Leslie, 21st October 1542.

Extract Charter, in favour of the Master of Forbes, of the Barony of Fudes, 4th January 1538.

Extract Charter, in favour of the Master of Glencairn, of the Lands of Arrochie, &c. 26th November 1526.

Extract Charter, in favour of the Master of Ogilvie, of the Lands of Hall-yards, 14th February 1539.

Extract

All these condescended
on in the table printed
for Lord Daer, in the
hands of the Court.

Extract Charter, in favour of the Master of Gordon, of the Lands of Glenloy, 11th August 1553.

Extract Charter, in favour of the Master of Lindsay, of the Barony of Byres, 11th November 1546.

Extract Charter, in favour of the Master of Sinclair, of the Barony of Dyfart, 24th November 1548.

Extract Charter, in favour of the Master of Glencairn, of the Lands of Auchinzean, 3d August 1549.

EDINBURGH, 28th February 1792.

Betwixt the hours of Eleven and Twelve forenoon, I JOHN SYME, clerk to Laurence Hill writer to the signet, agent for the petitioner, did intimate to Alexander Young writer to the signet, agent for the Freeholders of the Stewartry of Kirkcudbright, and to James Loch writer to the signet, agent for Peter Johnston of Carnfalloch, That copies of the foregoing petition were to be boxed this day, in order to be moved to-morrow. This I did, by delivering to the said Alexander Young and James Loch a printed copy of the foregoing petition, with a note of intimation to the above effect subjoined, before these witnesses, William Anderson and Archibald Smith, both clerks to the said Laurence Hill.

JOHN SYME.